CERTIFICATE.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1904.

No. [redacted] 43.

MARIA F. THOMAS AND GEORGE FOLSOM,

vs.

THE BOARD OF TRUSTEES OF THE OHIO STATE UNIVERSITY.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

FILED MAY 31, 1905.

(19,941.)

(18,941.)

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OCTOBER TERM, 1903.

No. 290.

MARIA F. THOMAS AND GEORGE FOLSOM,

vs.

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ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JANUARY 26, 1904.

1 Filed Apr. 15, 1903. Frank O. Loveland, Clerk.

United States Circuit Court of Appeals, Sixth Circuit.

MARIA F. THOMAS & GEORGE FOLSOM, Appellants, *vs.* THE BOARD OF TRUSTEES OF THE OHIO State University, Appellee.	No. 1137. Appeal from the Circuit Court of the United States for the Southern District of Ohio.

Submitted March 6, 1903; decided April 7, 1903.

Before Lurton and Severens, circuit judges, and Cochran, district judge.

This is an appeal from the decree sustaining a demurrer and dismissing the bill of the complainants for want of equity.

1. The complainant in the bill is Maria F. Thomas who describes herself as a citizen of the State of Michigan.

2. The defendants named are, George Folsom who the bill avers is a citizen of California, and "The Board of Trustees of the Ohio State University."

By an amendment to the bill the following are the averments in respect to the capacity of the said Board of Trustees to be sued in that name and as a corporation of Ohio within the jurisdictional rule imputing for purposes of Federal jurisdiction the citizenship of corporators to the State under whose laws the corporation was organized:

"She avers that the said The Board of Trustees of the Ohio State University is a citizen of and domiciled in the State of Ohio.

And your complainant further avers, that the said respondent, The Board of Trustees of the Ohio State University was created by and exists under and by virtue of a law duly passed and enacted by the legislature of said State of Ohio, on March 22, 1870, and now known and designated as sections 4105–9 and following, of the Revised Statutes of said State of Ohio, and the subsequent acts amendatory of and supplementary thereto.

2 And your complainant further avers that said respondent, said The Board of Trustees of the Ohio State University, under and by virtue of the aforesaid laws and enactments, and at all times since its creation and establishment, is fully authorized and empowered to sue and be sued; to contract and be contracted with; to make and use a common seal, and to alter the same at its pleasure; and to adopt by-laws, rules and regulations for the government of said college, and to have the general supervision of all lands, buildings and other property belonging to said college; and of receiving by gift, devise or bequest, moneys, lands and other

properties for its benefit and for the benefit of those under its charge, subject, however, to the provisions, exceptions and restrictions contained in sections twenty (20) and five thousand nine hundred and fifteen (5915) of the Revised Statutes of the State of Ohio."

3. The object of the bill was to partition certain lands claimed tenants in common by the complainant Maria F. Thomas and the defendant, George Folsom. These lands were, however, held adversely by the said Board of Trustees under a claim of title adverse to that asserted by said Maria F. Thomas and her co-tenant George Folsom. The bill therefore sought to have the title determined as preliminary to partition.

4. The said Board of Trustees appeared and filed a demurrer which is in the following words:

"*The Demurrer of the Defendant, The Board of Trustees of the Ohio State University, to the Bill of Complaint of the Plaintiff.*

This defendant, not confessing all or any of the matters in the bill of complaint contained to be true as therein set forth, doth demur to said bill. And for cause of demurrer showeth:

That the complainant hath not in her said bill made or stated such a case as entitles her in a court of equity, to any relief against this defendant, as to the matters contained in the said bill, or any of said matters.

Wherefore, and for divers other good causes of demurrer appearing in the said bill, this defendant doth demur thereto. And it prays the judgment of this honorable court whether it shall be compelled to make any answer to the said bill; and this defendant humbly prays to be hence dismissed with its reasonable costs in this behalf sustained."

This demurrer was sustained and a decree entered reciting that "on consideration whereof the court finds and holds that neither the plaintiff, Maria F. Thomas, nor the defendant, George Folsom, has any right, title, interest or estate in the lands described in the bill or in the rents or profits thereof, but that the same since
3 the death of Charlotte G. Page, have been and are the property in fee simple of the Board of Trustees of the Ohio State University. Said demurrer is, therefore, sustained and the bill is dismissed at the costs of the plaintiff, to which she excepts and prays an appeal which is allowed and the appeal bond is fixed at $500.00."

5. From this decree both Maria F. Thomas and George Folsom prayed and perfected an appeal.

6. The said Folsom entered his appearance in the circuit court, but filed no defense and no decree by default was taken against him.

7. The jurisdiction of the circuit court was wholly dependent upon diversity of citizenship. Neither defendant made any objection in the circuit court to its jurisdiction either because the case stated was not one of equitable cognizance nor one within the jurisdiction of a Federal court.

8. The appellant George Folsom now insists, among other things, that the court below had no cognizance of the cause because the requisite diversity of citizenship does not exist, the Board of Trustees of the Ohio State University not being a corporation of Ohio within the jurisdictional rule imputing to the members of that board citizenship of the State under whose law it is organized.

Because the court has grave doubt touching the jurisdiction of the circuit court, it is ordered that the foregoing statement be certified to the Supreme Court and that the instruction of that court be requested for the proper decision of the following questions which arise upon the record:

1. Does the bill sufficiently aver that the Board of Trustees of Ohio State University is a corporation of the State of Ohio, or does it aver facts which in legal intendment constitute said body a corporation of the State of Ohio, within the rule that a suit by or against a corporation in a court of the United States is conclusively presumed, for the purposes of the litigation, to be one by or against citizens of the State creating the corporation?

2. If the said Board of Trustees be not such a corporation as is required by the jurisdictional rule referred to, may this suit be maintained against it as "The Board of Trustees of the Ohio State University" without bringing the persons constituting the board before the court as defendants?

3. If the said board may sue or be sued in a Federal court by the name of "The Board of Trustees of the *the* Ohio State
4 University," although not constituting a corporation of the State of Ohio, within the jurisdictional rule referred to in the first question, do the facts stated on the face of the bill sufficiently show that the persons composing said Board of Trustees are citizens of Ohio, or should the court take notice of the law creating said Board of Trustees, and of other laws of Ohio defining the qualification of such trustees, and by legal intendments find that the persons constituting said board when this bill was filed were in fact citizens of Ohio and that the requisite diversity of citizenship existed to give jurisdiction to the circuit court?

HORACE H. LURTON,
HENRY F. SEVERENS,
A. M. J. COCHRAN,
Judges U. S. Circuit Court of Appeals, Sixth Circuit.

May 4, 1903.

5 United States Circuit Court of Appeals for the Sixth Circuit.

UNITED STATES OF AMERICA, *Sixth Judicial Circuit,* } ss:

I, Frank O. Loveland, clerk of the United States circuit court of appeals for the sixth circuit, do hereby certify that the foregoing certificate and statement of facts in the case of Maria F. Thomas et *al. v.* Board of Trustees of the Ohio State University was duly filed and entered of record in my office by order of said court, and as directed by said court, the said certificate is by me forwarded to the Supreme Court of the United States for its action thereon.

Seal United States Circuit Court of Appeals, Sixth Circuit.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of said court, at the city of Cincinnati, Ohio, this 4th day of May A. D. 1903

FRANK O. LOVELAND,
Clerk of United States Circuit Court of Appeals for the Sixth Circuit.

[Endorsed:] 1137 United States circuit court of appeals for the sixth circuit Maria F. Thomas & George Folsom *vs.* The Board of Trustees of the Ohio State University Questions certified to the Supreme Court of the United States

Endorsed on cover: File No. 18,941. U. S. circuit court of appeals, 6th circuit. Term No. 290. Maria F. Thomas and George Folsom *vs.* The Board of Trustees of the Ohio State University. (Certificate.) Filed May 21, 1903. File No. 18,941.